

1 Michael S. Biggs, Esq. SBN: 237640
2 BIGGS LAW PC
3 Post Office Box 454
4 Petaluma, CA 94953-0454

(707) 763-8000 Telephone
(707) 763-8010 Facsimile

5 Attorney for Plaintiffs
6 PINOLEVILLE POMO NATION, et al

7
8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 PINOLEVILLE POMO NATION,
12 PINOLEVILLE POMO NATION
13 ENVIRONMENTAL ASSOCIATION AND
14 LEONA WILLIAMS,

15 Plaintiffs,

16 v.

17 UKIAH AUTO DISMANTLERS, WAYNE
18 HUNT ISABEL LEWRIGHT, WARRIOR
19 INDUSTRIES, INC., RICHARD MAYFIELD,
20 ROSS JUNIOR MAYFIELD, PAULA
21 MAYFIELD, KENNETH HUNT, U.S.
22 ALCHEMY CORPORATION AND DOES 1-
23 50, INCLUSIVE,

24 Defendants.

Case No.: C 07 2648 SI

**PLAINTIFFS REPLY TO
UAD (HUNTS) OPPOSITION
BRIEF**

RULE 65 Preliminary Injunction

Date: 06/25/08
Time: 1:30 P.M.
Dept: Courtroom C, 15th Floor
Judge: Susan Illston

25 **Plaintiffs Reply**

26 1 Plaintiff in reply submits the Declaration of George Provencher in Support
27 of Plaintiffs Reply to Hunt Opposition Brief.
28

1 2. In light of Mr. Hunts contention in his declaration that UAD brings in \$200,000 per month
2 it is shocking that he is to “cheap” to run UAD at anything but “third world” standards as the
3 evidence on file shows that he has.

4 3. It is also shocking that only after Plaintiff filed this motion and on the eve of responsive
5 pleadings on injunction that Mr. Hunt saw fit to hire Dr. Donald McEdwards.

6 4. Dr. McEdwards has made one trip to UAD under “non-storm” conditions but does not
7 know enough information yet to assist UAD. SEE Declarations of Joaquin Wright and George
8 Provencher.

9 5. Wayne Briley has made an unauthorized “official capacity” declaration as a County of
10 Mendocino employee on Mr. Neary’s letterhead –Not County Counsels.

11 6. In Plaintiffs Complaint of May 2007 contained in Exhibit D in the section prepared by
12 the California Department of Fish and Game is an email between Briley and Officer Karen
13 Maurer, SEE EXHIBIT 1.

14 7. Briley thinks things are just fine at UAD in 2006 and apparently in 2008 as well – little
15 did he know US EPA and CWRQB and the California Department of Fish and Game were going
16 to inspect UAD a few days later and issue the ORDER ON ABATEMENT AND CLEANUP of
17 March 29 2006.

18 8. What does this say for Briley’s credibility besides not much? One point made by Briley
19 in his declaration at page 2 line 22 is that “he did not conduct any analytical diagnostics of the
20 storm water runoff”.

21 7. KENNEC INC via Joaquin Wright has conducted such testing and the results are
22 alarming to say the least. SEE Joaquin Wright’s declarations’ on file.
23
24
25
26
27
28

8. James McLeary has made an unauthorized "official capacity" declaration as a County of Mendocino employee on Mr. Neary's letterhead –Not County Counsels.

9. Mr. McLeary echoes the familiar mantra that "someone else's" interest arises above the Pomo Indian peoples. So it's ok to use Indian land as a dumping ground as he administrates the Counties abandoned vehicle program.

10. Mr. McLeary wants all of this to go away because now after years of failed regulation by "official actors" at his level - his superiors are going to learn that McLeary has failed his duties and 'acted' and 'omitted' with 'deliberate indifference' in aiding and abetting 'customs' in failing to implement regulations and codes and otherwise carry out the responsibilities of his office in protecting the environment and rights of peoples in their enjoyment of lands.

11. Defendant Hunt as does Defendant Mayfield focus on the 2003 Vector report for all of the wrong reasons. The report was done in 2003-the present at issue contaminants and lack of best management practices (BMP) were identified from January 2006 and through the most recent assessments and testing all of which information is now on file with the Court.

CONCLUSION

Defendant Hunt has failed to make a cogent legal argument or any offer any evidence to justify denial of injunctive relief as requested by the Plaintiff.

Plaintiff is only asking the Court to order the following:

- i) Retain licensed engineer or licensed geologist and lodge CV or resume with Court and PPN Tribal Council.
- ii) Provide access for PPN Tribal Council TO UAD site over 60 days for PLAINTIFFS sediment and soil testing and further and extensive testing as contemplated in

1 Declaration of Joaquin Wright of KENNEC INC EARTH ENGINEERING &
2 SCIENCE.

- 3
4 iii) Under supervision of licensed engineer or licensed geologist, remove all contaminated
5 soil off UAD site until all hazardous materials and or constituents are below CAL
6 EPA MCL limits, legally and properly, and in compliance with all state and federal
7 regulations, and in a manner when moving dirt about, not to create hazards such as
8 airborne particles such as lead. Provide manifest and written documentation to Court
9 and PPN Tribal Council as to transportation and destination of contaminated soil.
10
11 iv) Put down Asphalt where industrial operations are contemplated.
12
13 v) Submit plan for Best Management Practices (BMP) to prevent pollution and illegal
14 discharge of pollution certified and prepared by a licensed engineer or licensed
15 geologist to be lodged with Court and PPN Tribal Council.
16
17 vi) Implement BMP'S verified through initial inspection by PPN Tribal Council in order to
18 resume industrial operations, and then twice monthly monitoring for compliance over
19 12 month period by PPN Tribal Council.
20
21
22

23 Surely with an income of \$200, 000 per month, and now having Dr. McEdwards
24 assistance it would be a "breeze" for UAD to complete these proposed requirements in short
25 order.
26

27 Based on the foregoing authorities, pleadings and declarations on file with the
28 Court, Plaintiff the Pinoleville Pomo Nation, et al, respectfully requests that this Court issue an
order granting Plaintiff injunctive relief.

DATED: June 23, 2008

Respectfully submitted

/S/ Michael S. Biggs
Michael S. Biggs
Attorney for Plaintiffs